

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE OPTIMAL U.S. LITIGATION

No. 10-cv-4095 (SAS)
ECF CASE

FILED: 5/26/11

**[PROPOSED] ORDER REGARDING DEFENDANTS' TIME TO RESPOND TO THE
THIRD AMENDED COMPLAINT**

WHEREAS, the Court issued an Opinion and Order dated May 2, 2011 (the "May 2nd Order"), permitting Plaintiffs to amend the Second Amended Complaint to add derivative claims;

WHEREAS, at a Conference on May 10, 2011 (the "May 10th Conference"), the Court agreed to grant Plaintiffs leave to file a Third Amended Complaint to add a new plaintiff;

WHEREAS, at the May 10th Conference, Plaintiffs were granted leave to address whether a clause in the Santander Bank & Trust, Ltd. Terms and Conditions affects the Court's ruling in the May 2nd Order dismissing the Santander Plaintiffs;

WHEREAS, at the May 10th Conference, Plaintiffs were granted leave to address the effect of *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114 (2d Cir. 1991) on the May 2nd Order;

WHEREAS, the May 2nd Order permits Defendants to raise certain arguments, including *forum non conveniens*, in response to any amended pleading by Plaintiffs;

WHEREAS, a Third Amended Complaint was filed on May 17, 2011; and

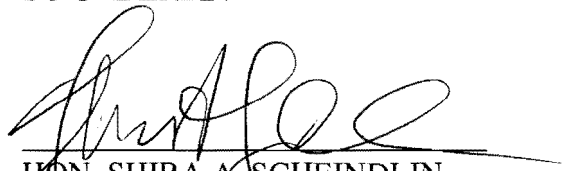
WHEREAS, consistent with the May 10th Conference, Plaintiffs and Defendants have agreed that Defendants do not need to respond to the Third Amended Complaint until 20 days after the Court rules on the above issues;

IT IS THEREFORE ORDERED THAT,

1. Defendants are not required to respond to the Third Amended Complaint at this time.
2. Defendants shall file their Motion to Dismiss the Third Amended Complaint within twenty-one (21) days of the Court's ruling on Plaintiffs' motion for reconsideration [D.E. 35] and Memorandum of Law concerning the Wagoner Rule [D.E. 39]. Such motion to dismiss the Third Amended Complaint may raise: 1) as discussed at the May 10th Conference, those issues allowed or arising out of the May 2nd Order, 2) *forum non conveniens*, and 3) any other argument which results from the addition of a new plaintiff in the Third Amended Complaint, presented for consideration pursuant to the Court's individual practices. Defendants shall prepare a pre-motion letter addressed to the Plaintiffs, with a copy to the Court, that sets forth those arguments directly attributable to the addition of a new plaintiff to the Third Amended Complaint.
3. Plaintiffs shall respond to Defendants' motion to dismiss within ~~forty-five~~ (45) ²¹ days. SAS
4. Defendants shall reply to Plaintiffs' response within ~~twenty-one~~ (21) days. 14
SAS

Dated: New York, New York
May 24, 2011

SO ORDERED.


HON. SHIRA A. SCHEINDLIN
United States District Judge